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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

NANO, SARGON N

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ipa.mail@hp.com
jessica.l.fusek@hp.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CURTIS T. GROSS

Appeal 2008-005156
Application 09/920,591¹
Technology Center 2400

Decided²: June 5, 2009

Before JAMES D. THOMAS, JAY P. LUCAS, and JOHN A. JEFFERY,
Administrative Patent Judges.

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ Application filed July 31, 2001. The real party in interest is Hewlett-Packard Development Co.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail date (paper delivery) or Notification Date (electronic Delivery).

STATEMENT OF THE CASE

Appellant appeals from a final rejection of claims 1 to 23 under authority of 35 U.S.C. § 134. The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b). Claim 24 is cancelled.

Appellant's invention relates to an adapter for providing access for a plurality of users, for example, at a meeting to a shared image projection device, so that any of the users may display or modify the image projected on the screen. In the words of the Appellant:

Since many meeting participants attend face-to-face meetings with their computers (e-g., a laptop computer), it would be desirable if these meeting participants could share information with the ease provided by applications such as NETMEETING®, yet still maintain the conventional flow of a face-to-face meeting.

To assist in achieving such a result, the inventor has devised an adapter for providing network access to a shared image projection device. The adapter may comprise a network interface for connecting to a network and receiving network data from a network device over the network. A client, operatively associated with the network interface, receives data from the network interface and produces a data signal. A video display driver, operatively associated with the client, receives the data signal and produces video data for the shared image projection device.

Also disclosed is a method for providing network access to a shared image projection device that, according to one embodiment, comprises the steps of: connecting the shared image projection device to a network via a network adapter; receiving network data at the network adapter, the network data being received from another device which is connected to the network; and outputting video data from the network adapter to the shared image projection device, in response to the network data, whereby the network data is then displayed via the shared image projection device.

(Spec. 3, ll. 4-22).

Claim 1 is exemplary:

1. An adapter for providing network 'access to a shared image projection device, comprising:

a network interface for connecting to a network and receiving network data from a network device over the network;

a client, operatively associated with the network interface, said client receiving data from the network interface and producing a data signal; and

a video display driver, operatively associated with the client, for providing video data to the shared image projection device, said video display driver receiving the data signal produced by the client and producing said video data.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Ludwig	U.S. 6,237,025 B1	May 22, 2001
DeNicola	U.S. 6,288,753 B1	Sep. 11, 2001

REJECTIONS

The Examiner rejects the claims as follows:

Claims 1 to 5, 10, 11, and 13 to 23 stand rejected under 35 U.S.C. § 102(e) for being anticipated by DeNicola.

Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) for being obvious over DeNicola in view of Ludwig.

Correction of the Rejections

We first note that the Examiner failed to formally express the rejection of claims 6, 7, and 12. (Answer 3, bottom). When discussed in the explanation of the rejection (Answer 9, middle to 10, bottom) under the heading of 35 U.S.C. § 102, claims 6, 7, and 12 were found to be “obvious to one of the ordinary skill in the art,” clearly invoking the standard under 35 U.S.C. § 103(a) for a rejection over DeNicola in view of “Official Notice.” (Answer 10, middle). Meanwhile, the Appellant, looking at the title of the rejection, cites claims 6, 7, and 12 as being rejected under 35 U.S.C. § 102. (App. Br. 7, middle) and discusses those claims under the heading of that statute, but with arguments (directed at the parent claims) equally applicable to a rejection under 35 U.S.C. § 103 (*see* App. Br. 8-9 (claims 6 and 7), and 9-10 (claim 12)).

As the Appellant and the Examiner clearly and fully argued these claims on the merits, and in the interest of judicial economy, we will take the expedient of rephrasing the rejections consistent with the arguments presented by both parties, and find that the following rejections expressed the intent of the Examiner and Appellant:

R1: Claims 1 to 5, 10, 11, and 13 to 23 stand rejected under 35 U.S.C. § 102(e) for being anticipated by DeNicola.

R2: Claims 6, 7, and 12 stand rejected under 35 U.S.C. § 103(a) for being obvious over DeNicola in view of Official Notice.

R3: Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) for being obvious over DeNicola in view of Ludwig.

Groups of Claims:

Claims will be discussed in the order of the arguments presented by the Appellant.

Appellant contends that the claimed subject matter is not anticipated by DeNicola, or rendered obvious by DeNicola in combination with Ludwig, for failure of the references to teach or suggest all of the claimed limitations. The Examiner contends that each of the claims is properly rejected.

Rather than repeat the arguments of the Appellant or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in this opinion. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived.

We affirm the rejections.

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. §§ 102(e) and 103(a). The issue turns on whether the DeNicola reference teaches a client producing data signals as claimed, in the context of the other limitations of the claims.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Appellant invented an adapter for permitting participants at a meeting or elsewhere to share control of and contribute content to an image projection device used at the meeting. (Spec 6, ll. 3-9). The adapter

may be part of the image projection device, and comprises a network interface, connected to a client that produces data signals, and a video display driver that creates video for the projector from the data signals. (Spec 6, ll. 10-25).

2. Figure 1 of Appellant's invention is reproduced below:

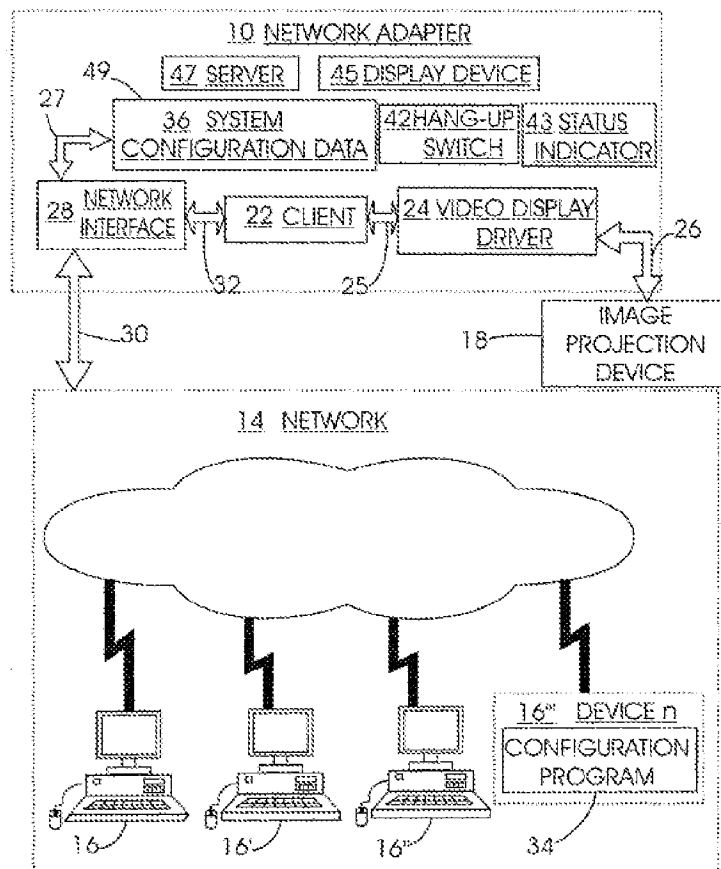


FIG. 1

Figure 1 shows the main elements of Appellant's invention.

3. DeNicola presents a large interactive distance learning system that presents students with the audio and video of a teacher delivering the lesson, supported by numerous subsidiary screens with which the student takes tests, gets background material and responds to the teacher.
(Abstract).

4. Figure 3 of DeNicola is presented below:

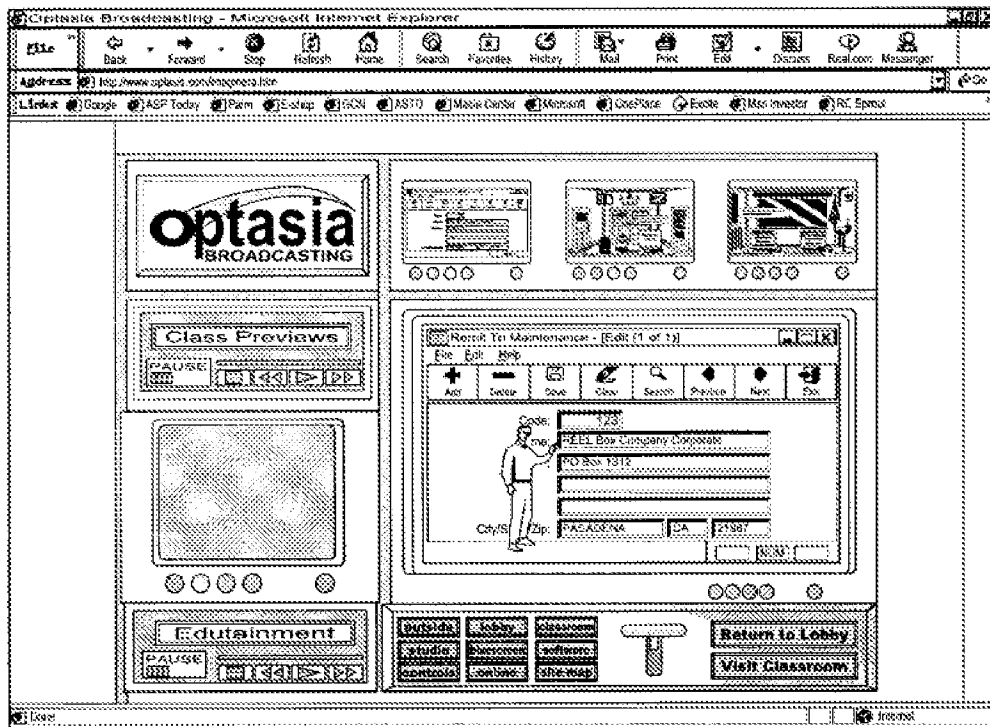


FIG. 3

Figure 3 shows the user screen of the training system of DeNicola.

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86

(Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

“In reviewing the [E]xaminer’s decision on appeal, the Board must necessarily weigh all of the evidence and argument.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005) (citation omitted).

“Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999). “In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.” *Id.* (internal citations omitted).

[U]nless a reference discloses within the four corners of the document not only all of the limitations claimed *but also all of the limitations arranged or combined in the same way as recited in the claim*, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.

Net MoneyIN, Inc. v. VeriSign, 545 F.3d 1359, 1371 (Fed. Cir. 2008)
(emphasis added).

Our reviewing court has held in a number of decisions that a United States patent speaks for all it discloses as of its filing date, even when used in combination with other references. *In re Zenitz*, 333 F.2d 924, 926 (CCPA 1964) (internal citations omitted).

However, although elements must be arranged as required by the claim, “this is not an *ipsissimis verbis* test,” i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

ANALYSIS

From our review of the administrative record, we find that Examiner has presented a prima facie case for the rejections of Appellant’s claims under 35 U.S.C. §§ 102 and 103. The prima facie case is presented on pages 3 to 11 of the Examiner’s Answer. In opposition, Appellant presents a number of arguments.

*Arguments with respect to the rejection
of claims 1 to 5, 10, 11, and 13 to 23
under 35 U.S.C. § 102(e) [R1]*

Appellant contends that Examiner erred in rejecting the noted claims under 35 U.S.C. § 102(e). Appellant states that the Examiner has read the “client” element of the representative claim 1 on “students (i.e. people) that access a virtual university of the Web server,” which is improper of itself,

and further does not provide for “a client . . . producing a data signal” as claimed. (App. Br. 8-9).

On clarification, the Examiner states that he is basing his rejection on the “remote learning location” subsystem 24, as illustrated in Fig. 2.³ (Answer 12, bottom to 13, top). This subsystem provides the students at a remote location from the teacher’s studio with a network interface to the Internet through terminal 66, using a browser program as a client, which produces a video signal to drive the big display screen on which the students interact with the virtual class. (*See* FF 3 and 4). “Thus, such videoconference multicasting allows the students to interact with the teacher and other installations during the course of lecture.” (DeNicola, col. 9, ll. 14-16). We are, on consideration, persuaded that the reference does disclose each element of the claim, and do not find error on this point.

Appellant further argues that “[n]owhere does this section of DeNicola teach or suggest connecting a shared image projection device to a network via a network adapter.” (App. Br. 10, top). With the interpretation of the adapter to be the equipment as described in the remote learning location 24, we do not agree with Appellant’s argument. Student workstation 66 is clearly connected to the Internet 68 to receive its data, and presents it on video screen 64 to the students. (Fig. 2).

³ Appellant complains that the Examiner has shifted his interpretation of the client element of the claim from the students to the student’s workstation. (Reply Br. 3). We do not agree, as the Final Rejection clearly referred to “students interaction with the Web site”, which encompasses the whole subsystem 24. (Final Rejection mailed Apr. 20, 2005, at 2, bottom).

With regard to claim 11, Appellant contends that the claimed elements are only described piecemeal, and are not connected as claimed. (App. Br. 10, bottom). We cannot agree, as the subsystem 24, previously described, constitutes a functional whole, performing the connecting, receiving and outputting steps as disclosed.

With regard to claim 17, Appellant argues that the reference fails to teach the claimed element of the adapter. (App. Br. 11, middle). As the claimed adapter contains the same subcomponents as recited above, and as described concerning the dotted box surrounding remote learning location 24 (DeNicola, Fig. 2; col. 9, ll. 3-15), we are not persuaded that the Appellant has found error in the rejection.

With regard to claims 2, 15, and 20, the Appellant argues that DeNicola does not teach an adapter comprising computer readable storage media storing system configuration data allowing the adapter to be identified. (App. Br. 11, bottom). In DeNicola, a student logs in to the system using a username, which results in test information being sent to the student at that terminal. (Col. 16, ll. 33-46). The Examiner bases his anticipation of the noted claims on this stored configuration information, identifying the workstation. (Answer 13, bottom). We do not find error in the use of this teaching.

Finally, with regard to claim 10, Appellant contends that DeNicola does not teach or suggest that the adapter comprises the shared image projection device. (App. Br. 12, middle). In the description of item 24, the remote learning location, the shared image projection device 64 is clearly shown within the confines of the training site equipment 24. (DeNicola, Fig.

2). We agree with the Examiner that this satisfies the terms of the claim as written.

*Arguments with respect to the rejection
of claims 6, 7, and 12
under 35 U.S.C. § 103(a) [R2]*

As noted in the Rejections section above, claims 6, 7, and 12 are deemed to be rejected under 35 U.S.C. § 103 for being obvious over DeNicola in view of Official Notice. Appellant has included his arguments for the noted claims in the arguments discussed above for rejection R1. (*See* App. Br. 8-9). The specific limitations of the noted claims were not argued, but rather the arguments of the representative claims 1 and 11 were presented. In the discussion above, we did not find convincing evidence of Examiner error in the rejection of the representative independent claims.

Thus claims 6, 7, and 12 will stand or fall with the indicated representative claims; in this case, they fall.

*Arguments with respect to the rejection
of claims 8 and 9
under 35 U.S.C. § 103 [R3]*

Examiner has rejected claims 8 and 9 for being obvious over DeNicola in view of Ludwig. Appellant has only argued with respect to this rejection that Ludwig fails to cure the deficiencies of DeNicola. (App. Br. 13, bottom).

As we have not found such deficiencies, we will support the rejection of claims 8 and 9 under 35 U.S.C. § 103.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner has not erred in rejecting claims 1 to 23 as expressed in R1, R2 and R3.

DECISION

R1: The rejection of claims 1 to 5, 10, 11, and 13 to 23 under 35 U.S.C. § 102(e) for being anticipated by DeNicola is affirmed.

R2: The rejection of claims 6, 7, and 12 under 35 U.S.C. § 103(a) for being obvious over DeNicola in view of Official Notice is affirmed.

R3: The rejection of claims 8 and 9 under 35 U.S.C. § 103(a) for being obvious over DeNicola in view of Ludwig is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

msc

HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS CO 80527-2400